HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1751 of 2002 (SB)

Bhawani Shanker Kevat vs. Engineer In Chief, Irrigation Depart.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 16.12.03

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1751 of 2002 (SB)

Bhawani Shanker Kevat …….. Petitioner

Versus

1. Engineer in Chief Irrigation Department
   Dehradun
2. Superintending Engineer, Civil Nirman Mandal
   Dehradun
3. Executive Engineer Turnal and Power House
   Division, Dak Pathar
4. Ranindra Kumar, Work Supervisor,
   Dak Pathar
5. Amrit pal Work Supervisor Kotee Awas,
   Dak Pathar ……Respondents

Dated: 16.12.2003

Hon'ble Rajesh Tandon J.

Heard the learned counsel for the parties at length.

By the present writ petition the petitioner has prayed for the issue of a writ, order or direction in the nature of certiorari quashing the order dated 6.4.2001 passed by the respondent no.3, annexured-1 to the writ petition and for directing the respondents to permit the petitioner to work on his post of Work Supervisor till he attains the age of 60 years.

Briefly stated that facts giving rise to the present writ petition are that petitioner was appointed as work Supervisor in the year 1968

in Turnal and Power House Division, I, Irriagation Department, Dak Pathar, District Dehradun and he was continuing to work there. The petitioner has stated that on 6.4.2002 an order was issued by the respondent no.3 to the effect that petitioner will retire from service on with immediate effect.

The petitioner has stated that he made a representation to the respondents on 16.8.2002, annexure-5 to the writ petition in which he prayed that he has completed age of 58 years 9 months and according to the rules his age of superannuation is 60 years but respondents have not considered the said representation.

At the time of filing of the Writ petition the following order was passed by the Court:

"Learned C.S.C. has accepted notice on behalf of the respondents no.l to 3, who prays for and is granted three weeks time to file counter affidavit.

Issue notice to the respondents 4 and 5 returnable during the aforesaid period. List thereafter.

Meanwhile, respondents are directed to decide the representation of the petitioner dated 16.8.2002 contained in Annexure 5-A to the writ petition."

The grievance of the petitioner is that he is holding the post of Group "D' and as per Rule 56-A of the Fundamental Rules his age of superannuation is 60 years.

It has been informed by the learned counsel for the petitioner that the respondents have not considered the representation of the petitioner and he is not in service since 6.4.2002 and as such he could not complete his service up to his age of superannuation i.e. 60 years. He has also prayed that the respondents are directed to pay retirement benefits to the petitioner.

The Apex Court in 1985 (1) S.C.C. State of Kerala and other Vs. M. Padmanabhan Nair has held that pension is a valuable right and property the petitioner has right to claim by virtue of the continuous services rendered by him. The observations of the Apex Court are quoted below:

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

The aforesaid judgment of the Apex Court has also been followed in JT 1999 (2) SC 359 Dr. Uma Agrawal Vs State of U.P. & another and has held as under:

"Now-a-days, several writ petitions are being filed in this court and various High Courts seeking relief for disbursement, of retrial benefits, because of inordinate delays in payment of these benefits. As Krishna Iyer,J, stated in State of Maysore Vs C.R.Sheshadri & others (1974(4) S.C.C. 308), 'a retired government official is sensitive to delay in drawing monetary benefits. And to avoid posthumous satisfaction of the pecuniary expectation of the superannuated public servant- not unusual in government', it is becoming necessary to issue directions, in several cases, for early payment of these dues. In yet another case in State of Kerala and others Vs M. Padmanabhan Nair (1985 (1) SCC 429 this court had occasion to point out that usually 'the delay occurs by reason of non-production of the L.P.C. (Usually the delay occurs by reason of non-pruduction of the L.P.C. (last pay certificate) and the N.L.C. (no liability certificate) from the concerned departments' but both the documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest o n these

dues at the current market rate should commence at the expiry of two months from the date of retirement."

In R. Kapur Vs. Director of Inspection (Painting and publication) Income Tax and another, reported in (1994) 6 Supreme Court Cases 589 the Apex Court after relying the judgment of the Apex Court in State of Kerala Vs. M. Madmanabhan Nair 1985 (1) S.C.C. page 429, has held as under:-

"8. In this appeal before us the appellant urges that he would be entitled to 18% interest at least in view of judgment of this Court in State of Kerala Vs. M. Padmanabhan Nair. Relying on this ruling, it is submitted that there is unjustified culpable delay in issuing the No Demand. Certificate. The Tribunal having held that DCRG cannot be withheld because of the pendency of the claim for damages should have awarded interest at the rate of 18% per annum.

……..

10. This court in M. Madmanabhan Nair case has held as under:-

Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

In view of the aforesaid, retirement benefits admissible to the petitioner cannot be withheld by the respondents.

The respondents are, therefore, directed to release all retirement benefits admissible to the petitioner within one month from the date of

filing certified copy of this order. The petitioner shall also be entitled to get interest on pension @ 6% per annum besides this he shall be paid admissible interest on G.P.F. gratuity, G.I.S. etc.

It is made clear that as the petitioner was group 'D' employee hence his age of superannuation was 60 years but he was directed to get retired much before attaining the age of 60 years. He shall not be entitled to get salary for the remaining period. The respondents shall also consider for granting retirement benefits according to Rules to the petitioner presuming his age of retirement at 60 year.

With the aforesaid observations the writ petition is disposed of. No order as to costs.

16.12.2003 **(Rajesh Tandon, J.)**
Dhyani